

Motor vehicles, as defined in Section 1-146 of the Illinois Vehicle Code, trailers, as defined in Section 1-209 of the Illinois Vehicle Code, and all property purchased for the purpose of being attached to those motor vehicles or trailers as a part thereof, will qualify for the Rolling Stock Exemption if they carry persons or property for hire in interstate commerce on 15 or more occasions in a 12- month period. See 86 Ill. Adm. Code 130.340. (This is a GIL).

December 7, 2000

Dear Xxxxx:

This letter is in response to your letter dated August 30, 2000. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are writing to request clarification on Governor Ryan's August 24, 1999, change to Section 130.340 of the Illinois Administrative Code (Rolling Stock provision).

Specifically, we would like clarification on what constitutes a '12-month qualifying period'.

It is our understanding that any vehicle purchased or registered with the Illinois Commerce Commission after August 24, 1999, would have 12-months from the purchase/registration date to acquire the required 15-interstate trips. Each subsequent year would also have the 15-interstate trip requirement.

We would like to confirm how the following two examples would be handled:

**Example 1** – A vehicle is registered with the ILCC on August 1, 1999. Since the registration took place before the change in the code would the initial 12-month timeframe for having the 15-interstate trips be from August 1, 2000 to September 30, 2001?

**Example 2** – A vehicle is registered with the ILCC on July 1, 1997. Since the registration took place before the change in the code then would the first year period that the vehicle would be required to have 15-interstate trips be from July 1, 2000 to June 30, 2001? Furthermore, would this period be considered the **FOURTH** qualifying year or the **FIRST**?

Also, we would like guidance on the following two scenarios:

1. We have company equipment that is registered in the state of Illinois but DOES NOT return to Illinois once it has been initially processed. An example of this would be trucks we've purchased then sent to our CITY/STATE terminal. These vehicles do not, in the normal course of business, return to Illinois. We would like to confirm what the interstate trips requirements and qualifying periods would be for these vehicles.
2. Our trailers are habitually attached to our tractors and, during the normal course of business, are not required to be disconnected in order to make deliveries or pickups. What are the tracking/audit guidelines for this type of equipment?

If you have any questions please contact me. Thank you for your time.

The Illinois Retailers' Occupation Tax and Use Tax do not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce. The Department's rules governing the rolling stock exemption are found at 86 Ill. Adm. Code 130.340, copy enclosed.

The exemption applies to sales of tangible personal property to lessors under leases of one year or longer executed or in effect at the time of purchase with interstate carriers for hire for use as rolling stock moving in interstate commerce. A lessor will not incur Use Tax on the purchase of the vehicle that is leased to the interstate carrier for hire for use as rolling stock moving in interstate commerce under a lease term of one year or longer. See 35 ILCS 105/3-55(b) and 120/2-5(12). If a lessor leases a vehicle to an interstate carrier for hire under a lease term of less than one year, the rolling stock exemption is also available because the tax does not apply to the use by (or sale to) lessors, owners, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce. See 35 ILCS 105/3-55(c) and 120/2-(13).

Effective August 14, 1999, motor vehicles, trailers, and property attached to those motor vehicles and trailers must carry persons or property for hire in interstate commerce on 15 or more occasions within a 12- month period to qualify for the exemption. See 35 ILCS 120/2-51; and 86 Ill. Adm. Code 130.340(e). For other types of property used in interstate commerce, the interstate carriers must be able to show, from their books and records, that the property has moved in interstate commerce for hire on a regular and frequent basis in order to qualify for the exemption.

Purchasers also must be recognized by the appropriate federal or state regulatory agency as interstate carriers for hire and have received a Certificate of Authority to engage in interstate commerce. Please note that it is not the type of item that determines whether or not it qualifies as rolling stock, but rather how a qualifying interstate carrier uses the item. In addition to receiving the proper Certificate of Authority, purchasers should be aware that only those items used specifically as rolling stock would qualify. See the enclosed copy of 86 Ill. Adm. Code 130.340.

Subsection (e) of 86 Ill. Adm. Code 130.340 provides:

*"e) Pursuant to Public Act 91-0587, motor vehicles, as defined in Section 1-146 of the Illinois Vehicle Code, trailers, as defined in Section 1-209 of the Illinois Vehicle Code, and all property purchased for the purpose of being attached to those motor vehicles*

*or trailers as a part thereof, will qualify as rolling stock under this Section if they carry persons or property for hire in interstate commerce on 15 or more occasions in a 12-month period.* [35 ILCS 120/2-51] The first 12-month qualifying period for the use of a vehicle or trailer begins on the date of registration or titling with an agency of this State, whichever occurs later. If the vehicle or trailer is not required to be titled or registered with an agency of this State and the vehicle or trailer is not titled or registered with an agency of this State, the first 12-month qualifying period for use of that vehicle or trailer begins on the date of purchase of that vehicle or trailer. The vehicle or trailer must continue to be used in a qualifying manner for each consecutive 12-month period. The Department will apply the provisions of this subsection in determining whether such items qualify for exempt status under this Section for all periods in which liability has not become final or for which the statute of limitations for filing a claim has not expired. A liability does not become final until the liability is no longer open to protest, hearing, judicial review, or any other proceeding or action, either before the Department or in any court of this State.”

In your Example 1, we would have to assume that the motor vehicle was titled prior to the date of its registration on August 1, 1999.<sup>1</sup> As noted in subsection (e) of Section 130.340 set out above, the Department will apply the provisions of that subsection in determining whether such items qualify for exempt status under the Rolling Stock Exemption for all periods in which liability has not become final or for which the statute of limitations for filing a claim has not expired. In your example, the first 12-month qualifying period began on August 1, 1999 and would have expired on July 31, 2000.

In your Example 2, we would again have to assume that the motor vehicle was titled prior to the date of its registration on July 1, 1997.<sup>2</sup> The first 12-month qualifying period began on July 1, 1997 and expired on June 30, 1998. Please note that the provisions of Public Act 91-0587 did not change the limitations period for the Department to issue a Notice of Tax Liability. If the motor vehicle in your example was purchased the same day that it was registered, July 1, 1997, the Department would no longer be able to issue a Notice of Tax Liability after December 31, 2000 regarding that specific motor vehicle no matter how it was used after that date.

In response to the first additional scenario contained in your letter, motor vehicles that are registered in this State, and upon which no Illinois Use Tax has been paid because of the purchaser claiming the rolling stock exemption, must continue to be used in a qualifying manner even if they are used primarily outside of this State. The requirements for claiming the rolling stock exemption are the same whether the majority of the use of those motor vehicles is within this State or in other states.

Purchasers of motor vehicles and trailers who have claimed the rolling stock exemption must document the qualifying use of those motor vehicles and trailers through their books and records. Your company's books and records must reflect that the trailers made sufficient qualifying deliveries. The types of documentation that the interstate carriers retain in their books and records are very fact specific, and we cannot provide you with a specific answer in the context of a General Information Letter. We recommend that you maintain books and records establishing that the specific trailers are attached to specific tractors/trucks and that those vehicle combinations completed sufficient qualifying deliveries.

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<sup>1</sup> The first 12-month qualifying period for the use of a vehicle or trailer begins on the date of registration or titling with an agency of this State, whichever occurs later. 86 Ill. Adm. Code 130.340(e).

<sup>2</sup> See Footnote number 1.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.